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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,853	04/16/2004	Thomas P. Foran	EMP-133US	2086
24314	7590	11/17/2005	EXAMINER	
JANSSON, SHUPE & MUNGER & ANTARAMIAN, LTD				SMITH, RICHARD A
245 MAIN STREET				PAPER NUMBER
RACINE, WI 53403				2859

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/826,853	FORAN, THOMAS P.	
	<b>Examiner</b>	<b>Art Unit</b>	
	R. Alexander Smith	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 August 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 8,9,12,14-17 and 19-25 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 8,9,12,14-16,19 and 21-23 is/are rejected.  
 7) Claim(s) 17,20,24 and 25 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 8, 9, 12, 14-16, 19 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 455979 to Keller in view of FR 2785984 to Vouillot and 2002/0124425 to Szumer.

Keller discloses a vial (figures 1-3 and the associated text) comprising 8p\_8a cylinder (3 or 7) of a first material and having an inner surface defining a cavity and an outer surface, a second molded material and sleeve (1) formed to have a bore (2), the cylinder includes rings and indicia (10) stamped or embossed thereon and not penetrating the inner surface (column 3, lines 16-21) and that the cylinder is inserted into the second molded material and is fixed therein, e.g., by ultrasound (column 3, lines 21-28). Keller discloses the inner surface as being formed by

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molding, the cavity being partially filled with a liquid to define a bubble and being sized to receive a first end closure (via wall 5) and a second end closure (via cap 6),

Keller does not disclose the second molded material and sleeve being molded around the cylinder, the indicia being bounded, the first and second materials being acrylic, the inner surface being machined to a desired shape, the first material being polycarbonate and the limitations of claim 16.

Vouillot discloses a spirit level having vials (2 and 3) wherein the entire spirit level is molded around the vials. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the vial having the insertion and fixing phase, taught by Keller, to have the second material molded around the cylinder, as suggested by Vouillot, in order to remove the extra step and expense of insertion and fixing.

With respect to the indicia being bounded, the rings would inherently be bounded when Keller is modified by Vouillet.

With respect to claim 16 and the cylinder being solid below the melting point when the second material is molded around the cylinder: Vouillot discloses that the vials are solid, below the melting temperature and positioned before the second material for the spirit level is molded around the vials. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the technique, taught by Keller, to include a cylinder solid below its melting temperature when the second material is poured, as suggested by Vouillot, in order to help prevent the heat from the second material from distorting or warping the cylinder and affecting the vial's ability to indicate accurately.

Szumer discloses that inner surfaces can be machined to the desired shape and that molded can be used in the alternative [0028] and that today acrylic is the material predominantly used for making molded vials, although other plastics are also used [0002]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the vial, taught by Keller, to have an inner machined surface, as taught by Szumer, since Szumer discloses that these techniques can be used in the alternative and based on the shape and precision desired for the inner surface. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the first and second molded materials, taught by Keller, from acrylic, as taught by Szumer, since Szumer discloses that acrylic is the predominantly used material today for molding vials and since the use of acrylic for the second material would save on costs, e.g., inventory, setup, molding techniques employed, etc.

With respect to claim 23 and the first material being of polycarbonate, Szumer discloses that other plastics are also used for making vials as noted above. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the first material, taught by Keller, by using polycarbonate, as suggested by Keller, in order to make the vial harder and/or more impact resistant.

***Response to Arguments***

3. Applicant's arguments filed 17 August 2005 have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

4. Claims 17, 20, 24 and 25 are objected to as being dependent upon a rejected base claim; but would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.
  
5. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The prior art cited in PTO-892 and not mentioned above disclose related vials and methods.

Of particular note is U.S. 5,588,217 to Linder et al. who discloses a vial of glass or acrylic and a sleeve that can be chosen of various other materials depending on the manufacturer's needs, one of the materials being polycarbonate.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Alexander Smith whose telephone number is 571-272-2251. The examiner can normally be reached on Monday through Friday from 9:30-6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



R. Alexander Smith  
Primary Examiner  
Technology Center 2800

RAS

November 11, 2005